

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 –Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act: Sunset of Exclusive Contract Prohibition--Review of the Commission's Program Access Rules and Examination of Programming Tying Arrangements*

Fostering greater competition in the market for the delivery of multichannel video programming is a primary and long-standing goal of federal communications policy. The program access rules, in particular the prohibition against exclusive contracts, have been instrumental in the growth of viable competitors in the multichannel video programming distribution (MVPD) market. Today we determine that while competition has improved, vertically integrated programmers still have an incentive and ability to favor their affiliated cable operators over competitive MVPDs. The item we adopt today ensures that the competition in this market will continue unabated by retaining the ban on exclusive contracts for vertically integrated programmers for another five years. We therefore make sure that new entrants, in addition to existing players, will continue to have access to critical programming on a nondiscriminatory basis.

Significantly, today's Order makes the program access complaint process more effective by requiring the production of the information necessary to fairly and objectively adjudicate a complaint. This expanded discovery will improve the quality and efficiency of the Commission's resolution of program access complaints. The availability of programmers' carriage contracts, subject to confidential treatment, is essential for determining whether the programmer is discriminating in price, terms, and conditions.

I am particularly pleased that the Commission has initiated an inquiry into the "tying" practices of programmers. Broadcast and cable programmers routinely tie marquee programming, such as premium channels or regional sports programming, with unwanted or less desirable programming. The Commission seeks comment on whether to end these practices by requiring programmers to offer channels to MVPDs on a stand-alone basis. I believe that if a cable operator only wants one channel, it should not have to take 10 or 20 channels in order to get that one. This is a particularly important issue for small and rural MVPDs and can be a significant obstacle to becoming a viable competitor in the MVPD market. And, I am also concerned about the impact the tying of channels has on consumers who ultimately bear the costs of unwanted programming in the form of higher prices.

Consumers have seen their cable bills double over the last decade at the same time the costs for all other communications services have declined. I take cable operators at their word when they point to the increased cost of programming as the reason for the increased cost borne by consumers. As the Commission begins its examination of these tying arrangements we should bear in mind their impact on consumers in terms of prices and program choice.